

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Michael Hawes and Lisa Hawes,

Plaintiffs,

Civ. No. 09-365 (RHK/AJB)
ORDER

v.

Blast-Tek, Inc. d/b/a Warehouse Rentals,
et al.,

Defendants,

and

Blast-Tek, Inc. d/b/a Warehouse Rentals,

Defendant and
Third-Party Plaintiff,

v.

Coating Specialties, LLC,

Third-Party Defendant.

Blast-Tek, Inc. d/b/a Warehouse Rentals,

Civ. No. 10-3124 (RHK/AJB)
ORDER

Plaintiff,

v.

Quick Tanks, Inc., and McCoy Investments, Inc.,
d/b/a Forecast Sales,

Defendants.

These actions arise out of injuries allegedly sustained by Michael Hawes, the Plaintiff in case number 09-365, following the “explosion” of a bulk abrasive sandblaster.¹ Asserting various negligence, warranty, and product-liability theories, Hawes sued three defendants: Quick Tanks, Inc. (“Quick Tanks”), the alleged manufacturer of the pressure vessel – the tank – of the sandblaster; McCoy Investments, Inc. d/b/a Forecast Sales (“Forecast”), which allegedly purchased the tank from Quick Tanks and re-sold it to be integrated into a finished sandblaster; and Blast-Tek, Inc. d/b/a Warehouse Rentals (“Blast-Tek”), which allegedly obtained the tank from Forecast, combined it with other components into a finished sandblaster, and then leased the sandblaster to Coating Specialties, Inc. (“Coating Specialties”), Hawes’s employer.

Blast-Tek answered Hawes’s claims and impleaded Coating Specialties; Coating Specialties, Quick Tanks, and Forecast all filed cross-claims against one another, as well as against Blast-Tek. Notably, however, Blast-Tek did *not* file cross-claims against Quick Tanks or Forecast. Instead, it filed a separate action (case number 10-3124) alleging claims for indemnity and contribution against these Defendants. That latter action was originally assigned to the Honorable Paul A. Magnuson, but has been reassigned to the undersigned as related to case number 09-365.²

Hawes has now moved for partial summary judgment in case number 09-365, seeking a determination, based on the undisputed facts, that Blast-Tek was the

¹ Michael Hawes’s wife, Lisa, also is named as a Plaintiff in case number 09-365. Because her claims are derivative of Michael’s, for ease of reference the Court refers to Plaintiffs as “Hawes.”

² Blast-Tek has moved to consolidate the two cases under Federal Rule of Civil Procedure 42(a). Because the cases involve common questions of law and fact, its Motion will be granted.

manufacturer of the sandblaster as a matter of law; that Motion is currently scheduled to be heard on August 31, 2010. Meanwhile, in case number 10-3124, Quick Tanks and Forecast have jointly moved to dismiss for lack of personal jurisdiction, improper venue, and failure to state a claim.

In the Court's view, these Motions should be considered together. Moreover, the hearing on the Motion to Dismiss in case number 10-3124 has been scheduled for nearly two months from now (October 13, 2010), despite the fact that the issues being raised do not appear complicated and should not require extensive briefing.

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** as follows:

1. A hearing will be held on Tuesday, September 14, 2010, at 8:00 am in Courtroom 7A, Warren E. Burger Federal Building and United States Courthouse, 316 N. Robert Street, St. Paul, Minnesota, on Plaintiff's Motion for Partial Summary Judgment (Doc. No. 74 in Civ. No. 09-365) and Defendants Quick Tanks' and Forecast's Joint Motion to Dismiss (Doc. No. 7 in Civ. No. 10-3124). The previously scheduled hearings on these Motions are **CANCELED**,³

2. The following briefing schedule shall apply to Quick Tanks' and Forecast's Joint Motion to Dismiss: Quick Tanks' and Forecast's opening brief shall be served and filed no later than August 23, 2010; Blast-Tek's responsive brief shall be served and filed no later than September 2, 2010; and Quick Tanks' and Forecast's reply brief (if any)

³ In their Joint Notice of Motion, Quick Tanks and Forecast purported to limit oral argument on their Motion to 30 minutes per side. (See Doc. No. 8.) The Court, and not the parties, shall decide on the appropriate length of oral argument.

shall be served and filed no later than September 7, 2010. With respect to the Motion for Partial Summary Judgment, the previously established briefing schedule shall remain unchanged – that is, Hawes’s reply brief (if any) shall be served and filed on or before August 17, 2010; and

3. Blast Tek’s Motion to Consolidate (Doc. No. 2 in Civ. No. 10-3124) is **GRANTED**. Civil File Nos. 09-365 and 10-3124 are hereby **CONSOLIDATED** for all purposes, including discovery, non-dispositive motion practice, dispositive motion practice, and trial. All future filings shall be made under the case caption in Civil File No. 09-365. Civil File No. 10-3124 shall remain open for administrative purposes, but no further filings shall be made under that case number.

Dated: August 16, 2010

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge